Selayang Raya Development Sdn Bhd v 123 Orang Yang Disenaraikan Dalam Lampiran A (Encl 1)

HIGH COURT (SHAH ALAM) — ORIGINATING SUMMONS NO MT4–24–520 OF 1998
LOW HOP BING J
18 OCTOBER 2001

Civil Procedure *— Summary possession of land — Application for — Whether occupiers of land were trespassers — Whether consent or licence to occupy land given — Whether triable issues raised — Rules of the High Court 1980 O 89*

Land Law *— Possession — Recovery of — Order for recovery of possession — Whether occupiers of land were trespassers — Whether consent or licence to occupy land given — Persons who may give consent or licence — National Land Code 1965 s 5*

This was the plaintiff's application under O 89 of the Rules of the High Court 1980 ('the RHC') for vacant possession of the land held under HS (M) 20996, PT No 34799 in the Mukim of Batu and Daerah Gombak ('the said land') on the ground that the occupiers of the premises thereon were occupying the same without permission or consent. The plaintiff had purchased the said land from BT and on 19 March 1997, the plaintiff became the registered owner of the said land. The defendants had entered onto the said land in the 1970's and continued to occupy the same without licence, consent or permission from the plaintiff, BT, the Gombak District and Land Office or any relevant authority. On 14 January 1998, the plaintiff, through its solicitors, gave a notice to quit to the defendants to inter alia, demolish all buildings and constructions on the said land and to surrender vacant possession of the said land to the plaintiff but the defendants failed to do so. The defendants alleged that certain politicians had encouraged them to apply for the said land and had promised to provide better houses for them on the said land.

Held, allowing the plaintiff's application:

(1) It was not disputed that the plaintiff was the registered owner of the said land and the plaintiff had not given the defendants any licence, consent or permission to occupy the said land. Neither BT nor the Selangor State Authority had ever given any licence, consent or permission to the defendants to occupy the said land. As such, the defendants were trespassers or squatters on the said land (see p 682D–E).

(2) Following *Chong Wooi Leong & Ors v Lebbey Sdn Bhd* [1998] 2 MLJ 644, under s 5 of the National Land Code 1965, the consent or licence to occupy the said land can only come from the Ruler or Governor, as the case may be. A licence or consent from any other person, including the alleged promises by the politicians, would not suffice (see pp 682H–683A).

(3) The summary procedure under O 89 is governed by the same principles as those under O 14 of the RHC and the defendants had to show that there was a triable issue of law or fact. In the instant case, the defendants had failed to prove any triable issue on a balance of probabilities (see pp 683B–C, 684D–E).

[Bahasa Malaysia summary

Ini adalah permohonan plaintif di bawah A 89 Kaedah Mahkamah Tinggi 1980 ('KMT') bagi mendapatkan pemilikan kosong tanah yang dipegang di bawah HS (M) 20996, PT No 34799 in the Mukim of Batu and Daerah Gombak ('tanah tersebut') di atas alasan bahawa orang yang menduduki hartanah tersebut berbuat sedemikian tanpa sebarang izin atau kebenaran. Plaintif telah membeli tanah tersebut dari BT dan pada 19 Mac 1997, plaintif menjadi tuanpunya berdaftar tanah tersebut. Defendan telah memasuki tanah tersebut sejak 1970an dan terus mendudukinya tanpa lesen, kebenaran atau izin daripada plaintif, BT, pejabat daerah dan tanah atau mana-mana pihak relevan. Pada 14 Januari 1998, plaintif, menerusi peguamcaranya, memberi notis kepada defendan, inter alia, mengarahkan merobohkan kesemua bangunan dan pembinaan di atas tanah tersebut dan menyerahkan pemilikan kosong tanah tersebut kepada plaintif tetapi defendan gagal berbuat demikian. Defendan mendakwa ahli politik tertentu telah menggalakkan mereka memohon tanah tersebut serta berjanji akan mendirikan kediaman yang lebih baik bagi mereka di atas tanah tersebut.

Diputuskan, membenarkan permohonan plaintif:

(1) Adalah tidak dinafikan bahawa plaintif adalah tuanpunya berdaftar tanah tersebut dan plaintif tidak memberikan defendan sebarang lesen, kebenaran atau izin menduduki tanah tersebut. BT, mahupun pihak berkuasa negeri, tidak pernah memberi sebarang lesen, kebenaran atau izin kepada defendan menduduki tanah tersebut. Sedemikian, defendan adalah penceroboh atau setinggan di atas tanah tersebut (lihat ms 682D–E).

(2) Berdasarkan *Chong Wooi Leong & Ors v Lebbey Sdn Bhd* [1998] 2 MLJ 644, dan di bawah s 5 Kanun Tanah Negara 1965, kebenaran atau lesen menduduki tanah tersebut hanya boleh diberikan oleh Sultan atau Gabenor. Lesen atau kebenaran dari mana-mana pihak lain, termasuk janji-janji ahli politik yang didakwa itu, tidak mencukupi (lihat ms 682H–683A).

(3) Prosedur terus di bawah A 89 adalah dikawal oleh prinsip yang sama seperti yang mengawal A 14 KMT dan defendan perlu menunjukkan wujudnya isu undang-undang atau fakta yang perlu dibicarakan. Dalam kes ini defendan gagal membuktikan sebarang isu yang perlu dibicarakan pada kadar imbangan kebarangkalian (lihat ms 683B–C, 684D–E).]

Notes

For cases on application for summary of land, see 2 *Mallal's Digest* (4th Ed, 2001 Reissue) paras 6238–6247.

For cases on recovery of possession, see 8 *Mallal's Digest* (4th Ed, 2001 Reissue) paras 2952–2956.

Cases referred to

Bohari bin Taib & Ors v Pengarah Tanah Galian Selangor [1991] 1 MLJ 343 (refd)

Chiu Wing Wa & Ors v Ong Beng Cheng [1994] 1 MLJ 89 (refd)

Chong Wooi Leong & Ors v Lebbey Sdn Bhd [1998] 2 MLJ 644 (folld)

Lebbey Sdn Bhd v Chong Wooi Leong & Anor and other applications [1998] 5 MLJ 368 (refd)

McPhail v Persons Names Unknown [1973] 1 Ch 447 (refd)

Salim bin Ismail & Ors v Lebbey Sdn Bhd (No 2) [1997] 2 MLJ 4 (refd)

Shaheen bte Abu Bakar v Perbadanan Kemajuan Negeri Selangor [1998] 4 MLJ 233 (refd)

Sidek bin Haji Muhamad & 461 Ors v the Government of the State of Perak & Ors [1982] 1 MLJ 313 (refd)

Yap Pun & Anor v Orang-orang yang Tidak Dikenali yang Menduduki di atas tanah yang dikenali sebagai Lot No 108 Seksyen 92A Bandar Kuala Lumpur [1998] 6 MLJ 270 (refd)

Legislation referred to

National Land Code 1965 s 5

Rules of the High Court 1980 O 14, O 89

R Sivarasa (*Ponmugan* with him) (*Daim & Gamany*) for the defendants.

Tan Choo Teck (*Kington & Tan*) for the plaintiff.

Low Hop Bing J:

Application

This is the plaintiff's application in encl (1) under O 89 of the Rules of the High Court 1980 ('the RHC') for vacant possession of the land held under HS(M) 20996, PT No 34799, Mukim Batu Daerah Gombak ('the said land'), on the ground that the occupiers of the premises thereon are occupying without permission or consent.

Facts of the case

On 24 March 1995, the Gombak District and Land Office informed Baiduri Trade Sdn Bhd ('Baiduri Trade') that the latter was granted a 99-year lease of the said land. On 29 November 1996, Baiduri Trade was registered as the owner of the said land, for which the issue document of title was given. Thereafter, Baiduri Trade sold the said land to the plaintiff and the plaintiff was registered as owner thereof on 19 March 1997.

The defendants had entered onto the said land and continued to occupy the same without licence, consent or permission from the plaintiff, Baiduri Trade, the Gombak District and Land Office or any relevant authority.

On 14 January 1998, the plaintiff through its solicitors sent and gave a notice to quit to the defendants to, inter alia, demolish all buildings and constructions on the said land and to surrender vacant possession of the said land to the plaintiff, but the defendants have to date failed to do so. In the circumstances, the plaintiff prays for an order in terms of encl (1).

The defendants, on the other hand, through the affidavit of one Gunapushani a/p Ponnussamy said that their occupation of the said land was with the express or implied licence, consent or permission of the plaintiff's predecessor, the Gombak District and Land Office or the relevant authority, with the plaintiff's knowledge. The defendants added that the plaintiff is bound by the equity in favour of the defendants and that the plaintiff cannot invoke O 89 of the RHC. The defendants alleged that they have been staying in Kampung Selayang Bahagia since the 1970's and that in 1973 they visited one Senator Ibrahim bin Yakob who allegedly told them that the Selangor State Assembly had planned to open a new kampung along Jalan Rawang (Batu 7 to Batu 10). The Senator was alleged to have stated that the defendants were lucky to be staying along Batu 9 and that the defendants were encouraged to apply for the said land, by first establishing branches of political parties in the said kampung.

As a result of the said discussion, the defendants have established branches of MIC, UMNO and MCA in 1974. The defendants further alleged that in the 1980s, Datin Paduka Zaleha bt Ismail, the then Deputy Minister of Transport visited the said kampung three or four times and promised to provide better houses for the residents of the said kampung. Later, Dato Saidin bin Thamby, the then speaker of the State Assembly, visited the said kampung and promised to allocate housing lots and low cost houses at cheaper prices to the residents there, as they alleged that Dato Saidin bin Thamby was the chairman of the Land Division, Gombak Land Office as well as the Committee for Housing and Squatters. There is no evidence that a speaker of the State Assembly can also hold these posts, if at all such posts exist.

The defendants stated that in 1985 and 1986, the residents in the said kampung were involved in the project for expanding the highway along Jalan Rawang and the said Dato Saidin had promised the residents long houses for them to move into and for that purpose, he would obtain for them a piece of land within six months. Thereafter, the residents moved to the long house in Kampung Kertas, Jalan Sungai Tuah, to which electricity and water had been connected until now. They alleged that pursuant to the aforesaid promises, the defendants have built their own houses there and have since been there. They have also become voters in the said kampung. They said that the plaintiff's notice to quit was not valid as they are the residents with licence and/or consent and so have the right to remain there, either expressly or impliedly, as the plaintiff has knowledge of the defendants' presence there. The defendants said that they have an irrevocable equity to be on the said land.

Submission for plaintiff

Dato' Tan Choo Teck, learned counsel for the plaintiff, submitted that the personalities or politicians mentioned in the defendants' affidavit in reply had never promised the defendants the said land or any right or interest therein and that the defendants are illegally occupying the said land.

He added that even if the promises were made as alleged in the defendants' affidavit, they could not amount to the granting of any licence, consent or permission, neither could the connection of electricity and water, as the only authority which could do so is the state authority, as defined in s 5 of the National Land Code 1965.

It was further submitted for the plaintiff that the defendants are not entitled to claim any equity against the plaintiff and so there are no triable issues.

Contention for defendants

It was contended by Mr R Sivarasa and Mr Ponmugan, learned counsel for the defendants, that the representations made by the relevant authorities and public figures can bind the state in equity and that there are triable issues, thereby rendering the O 89 procedure unsuitable.

It was further argued for the defendants that the representations and/or promises made by the relevant authorities coupled with the provision of public amenities could amount to consent to occupy that would bind the state authority. In support of this proposition, three cases were cited for the defendants, viz *Shaheen bte Abu Bakar v Perbadanan Kemajuan Negeri Selangor* [1998] 4 MLJ 233 (FC), *Bohari bin Taib & Ors v Pengarah Tanah Galian Selangor* [1991] 1 MLJ 343 (SC) and *Salim bin Ismail & Lain-lain lwn Lebbey Sdn Bhd (No 2)* [1997] 2 MLJ 4 (CA).

Decision of the court

For the purpose of deciding on the matter before me, it is necessary to focus on the allegation of facts deposed to in the affidavits in order to see the wood for the trees, especially when the submissions of the respective learned counsel have travelled beyond the affidavits. Therefore, with the utmost respect to the respective learned counsel, I would not refer to those parts of their respective submissions which had departed from the ambit of their respective affidavits.

The all important provision of O 89(1) of the RHC which calls for judicial determination in the instant case merits reproduction as follows:

> 1 Proceedings to be brought by originating summons (O 89 r 1)
>
> Where a person claims possession of land which he alleges is occupied solely by a person or persons (not being a tenant or tenants holding over after the termination of the tenancy) who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings may be brought by originating summons in accordance with the provisions of this Order.

In *Shaheen*, which was cited for the defendants, the respondent (PKNS) filed an O 89 application to evict the appellant from a piece of land. It was averred that PKNS was the owner of the land given to PKNS by the State of Selangor. In 1994, PKNS entered into a sale and purchase agreement with Punca Alam Sdn Bhd ('Punca Alam') whereby PKNS sold 248 acres of the land to Punca Alam. PKNS alleged that illegal housing structures had been built on the land outside the area sold to Punca Alam. The appellant alleged that she had occupied the land with the consent and/or acquiescence of the land owner, ie State of Selangor. PKNS knew about the settlers after the state government had approved its application but it did not object to the occupation of the land by the settlers until 1994. The appellant averred that her house was located on the land sold to Punca Alam. Both the High Court and the Court of Appeal rejected her argument that PKNS had no locus standi and held that PKNS had the locus standi to make the O 89 application. On appeal to the Federal Court, it was held, inter alia, that:

(1) the locus standi of PKNS was a triable issue;

(2) the question of whether the settlers entered the land with the consent of the state authority was also a triable issue, as there was an arguable case that the settlers had occupied the land with the acquiescence of the state authority.

The facts in the above Federal Court decision are different from the case before me, as the plaintiff's locus standi herein is not an issue. Further, the defendants' affidavit herein did not show that the defendants have occupied the said land with the acquiescence of the state authority.

In *Bohari*, a Supreme Court decision which was cited with approval by the Federal Court in *Shaheen*, the facts and circumstances are significant. There was evidence by affidavit and documentary exhibits to show that the Selangor State Executive Council had approved the alienation of the land in dispute to the appellants and other settlers on the understanding that separate titles to the land would be issued. Temporary Occupation Licences (TOL's) were granted to them and had expired in 1984. The respondent's O 89 application succeeded in the High Court, but the appeal to the Supreme Court was allowed as the Supreme Court found that there was an arguable case in that they had occupied the land for three years under licence and thereafter had remained in occupation with the consent of the state government by virtue of the 1980 alienation already approved prior to the TOL's. The Supreme Court (through the judgment of Mohd Azmi SCJ, as he then was) held that this was one of the serious issues to be tried. The Supreme Court also made a distinction between squatters simpliciter who have no rights whatsoever and occupiers with licence or consent.

The allegation of facts in the defendants' affidavit filed in the instant case before me did not show that the defendants have any alienation, TOL or consent from the state authority and so the facts are distinguishable.

In *Salim (No 2)*, as relied on by the defendants, the High Court allowed the respondent's O 89 application, but the appellant's appeal was allowed,

as the appellant's affidavits deposed, inter alia, the state government had provided public amenities and that there was encouragement and support from the state authority and that the district officer had given consent to rebuild houses that were destroyed in a fire in 1991. The Court of Appeal held that these facts and circumstances constituted triable issues. A

The affidavit of the defendants herein on the other hand did not show that it was the state government which had provided public amenities and that there was encouragement and support from the state government or the state authority and so the facts are again clearly distinguishable. B

The summary procedure under O 89 is governed by the same principles as those under O 14 (per Mohd Azmi SCJ, as he then was, in *Chiu Wing Wa & Ors v Ong Beng Cheng* [1994] 1 MLJ 89, at p 94, as followed by the Federal Court in *Shaheen*, and by the Court of Appeal in *Salim (No 2)*. In other words, the defendant has to show that there is a triable issue of law or fact. The permutations of facts and circumstances constituting triable issues are boundless and each and every O 89 application must be decided by reference to the specific facts and circumstances in each individual case. C D

On the facts of the case before me, it is not controverted that the plaintiff is the registered owner of the said land and the plaintiff as registered owner has not given the defendants any licence, consent or permission to occupy the said land. Neither the plaintiff's predecessor in title nor the Selangor State Authority had ever given any licence, consent or permission to the defendants to occupy the said land. It is therefore my specific finding that the defendants are trespassers or squatters on the plaintiff's land. E

In *Sidek bin Haji Muhamad & 461 Ors v The Government Of The State of Perak & Ors* [1982] 1 MLJ 313, it was held by the Federal Court that squatters have no right either in law or in equity, (see *McPhail v Persons Names Unknown* [1973] 1 Ch 447, 456) per Raja Azlan Shah CJ (Malaya) (now HRH Perak), who added (at p 314): F

> It is well established that a court of equity will never assist squatters to resist an order of possession illegally acquired; it will never intervene in aid of wrong-doers (see *Grafton v Griffin* 39 ER 130). We would like to say this at once about squatters. The owner is not obliged to go to the courts to obtain an order of possession. He is entitled, if he so wishes, to take the remedy into his own hands. He can go in himself and turn them out without the aid of the courts of law. He can even use force, so long as he uses no more force than is reasonably necessary. He will not then be liable either criminally or civilly. This however is not to be encouraged because of the disturbance which might follow but the legality of it is beyond question. The decision of the English Court of Appeal in *Hemmings v Stoke Poges Golf Club* [1920] 1 KB 720 manifests this principle and we would also refer to the judgment of Harman J, in *Aglionby v Cohen* [1955] 1 QB 558 in this respect regarding common law rights. G H

In *Lebbey Sdn Bhd v Chong Wooi Leong & Anor and others applications* [1998] 5 MLJ 368, the facts are substantially similar to those in the instant case. In *Lebbey*, the plaintiff was the registered proprietor of a piece of land previously owned by the Selangor State Authority which had alienated to the plaintiff. The plaintiff planned to develop the land and by its notice to I

quit demanded the occupiers (the defendants) to vacate the land but the defendants refused and argued that:

(i) they had acquired a right to be compensated;

(ii) the plaintiff taking the land with full knowledge of the defendants occupying the land, took the land subject to the defendants' equity; and

(iii) although the defendants had entered the state land without consent or licence, they had peaceful enjoyment and occupation without interference by the state authorities.

In allowing the plaintiff's O 89 application for vacant possession, Abdul Wahab Patail J held, inter alia, as follows (see headnote):

(1) The registered owner of any land is prima facie entitled to possession of it, and any person claiming a right of occupation against such registered owner, such as in the case of the defendants, bears the burden of proving such right on a balance of probabilities.

(2) The defendants' argument ignored the essential distinction between the term state authority as defined under the National Land Code 1965 (the Code) and state authorities in the ordinary sense. State authority under the Code is defined, for the purposes of the State of Selangor, as the Ruler. For practical purposes, this means the Ruler acting upon the recommendation of the Exco of the state. The state government, let alone any Minister, Exco member or politician has nothing to do with the proceedings under the Code, which recognizes only the state authority. The district officer is unknown to the Code. Therefore, the defendants not only entered the land without consent but had also remained thereon without the consent of the state authority. The knowledge or acquiescence of other state authorities or personalities is wholly irrelevant to the Code. The application of equitable principles and the doctrine of estoppel was therefore misconceived (see pp 374E–I and 375C); *Government of the State of Negeri Sembilan & Anor v Yap Chong Lan & Ors* [1984] 2 MLJ 123 followed.

(3) A person seeking remedy in equity must come with clean hands. It was clear that the defendants had been in breach of the Code punishable under s 425 thereof. The defendants could not be said to have come with clean hands. That the state authority had not acted against the defendants could not mean that the state authority had given consent. Such argument could not stand in the face of the clear provision that no title to state land shall be acquired by possession, unlawful occupation or occupation under any licence for any period whatsoever.

This decision was upheld by the Court of Appeal sub nom *Chong Wooi Leong & Ors v Lebbey Sdn Bhd* [1998] 2 MLJ 644, where Abdul Malek Ahmad JCA (now FCJ) in delivering the judgment of the court held (see headnote):

Section 40 of the National Land Code 1965 ('the Code') vests solely in the State Authority the entire property in all State land within the territories of the State the rights to which have not been specifically disposed of by the State Authority. The definition in s 5 of the Code further denotes that the consent or licence can only come from the Ruler or Governor, as the case may be, and

as the land here is situated in the State of Selangor, it must mean the Ruler. A licence or consent from any other person, therefore, certainly would not suffice. In these circumstances, it was clear that all promises made to the appellants, who had never been given any temporary occupation licence by the State Authority, in whatever manner, by either the district officer, village headman, elected representative or the like, indicating that they had a right to occupy or continue to occupy the land, fell short of the requirement of the licence and consent from the State Authority as defined in s 5 of the Code, (see 658E–F, H–I); *Lee Suat Hong v Teo Lye* [1988] 2 MLJ 537 distinguished; *Sidek bin Haji Muhamad & Ors v The Government of the State of Perak & Ors* [1982] 1 MLJ 313 followed.

I am in entire agreement with the above decision of Abdul Wahab Patail J and I follow the above decision of the Court of Appeal.

A similar conclusion was reached by Mohd Noor Ahmad J (now JCA) in *Yap Pun & Anor v Orang-orang Yang Tidak Dikenali Yang Menduduki Di Atas Tanah Yang Dikenali Sebagai Lot No 108, Seksyen 92A, Bandar Kuala Lumpur* [1998] 6 MLJ 270. There the land was originally state land which was alienated to one Kamaruzzaman bin Ahmad on 13 January 1975 and the said Kamaruzzaman sold the land with vacant possession to the plaintiff on 24 February 1997. The learned judge followed the Federal Court decisions in *Sidek* and *Yap Chong Lan*.

Having carefully analyzed the facts and circumstances as deposed to in the plaintiff's and the defendants' respective affidavits, I am of the view that the defendants have failed to prove any triable issue herein on a balance of probabilities. I therefore allow the plaintiff's application in encl (1) and therefore make an order in terms therein under O 89.

Plaintiff's application allowed.

Reported by Lim Lee Na